

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: William W. Ackerman, CPA, Budget & Finance Director/797-1050

PREPARED BY: William W. Ackerman, CPA, Budget & Finance Director/

SUBJECT: Resolution

AFFECTED DISTRICT: Townwide

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: BOND ISSUANCE - AN INDUCEMENT RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, RELATIVE TO THE PROPOSED ISSUANCE OF VARIABLE RATE DEMAND REVENUE BONDS IN ONE OR MORE SERIES FOR THE PRINCIPAL PURPOSE OF LOANING THE PROCEEDS TO SHERIDAN HOUSE, INC. TO REFINANCE CERTAIN INDEBTEDNESS INCURRED BY IT IN CONNECTION WITH THE CONSTRUCTION AND EQUIPPING OF CERTAIN SOCIAL SERVICE FACILITIES; PROVIDING FOR THE PRELIMINARY APPROVAL BY THE TOWN FOR THE ISSUANCE OF NOT EXCEEDING \$7,500,000 OF SUCH BONDS IN ONE OR MORE SERIES; PROVIDING FOR CERTAIN RELATED MATTERS IN CONNECTION THEREWITH AND FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The accompanying Inducement Resolution is the first of two required Town Council actions and permits the Borrower to proceed with commitments for refinancing the Project, prior to the issuance of the Series 2008 Bonds. The Memorandum of Agreement between the Borrower and the Town will also serve to memorialize the understanding regarding fees and expenses payable by the Borrower to the Town, and provides indemnification to the Town for its action regarding the bond issue.

PREVIOUS ACTIONS: Town Council previously approved Resolution 2003-312 on December 2, 2003 for the United Jewish Community of Broward County, Inc. and Resolution 2007-317 on November 7, 2007 for the Parkway Christian Church, Inc.

CONCURRENCES: Town Administration, Town Attorney, Town Bond Counsel, and Sheridan House, Inc.

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve the resolution

Attachment(s): Resolution, Exhibit “A” and Exhibit “B”

RESOLUTION NO. _____

AN INDUCEMENT RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, RELATIVE TO THE PROPOSED ISSUANCE OF VARIABLE RATE DEMAND REVENUE BONDS IN ONE OR MORE SERIES FOR THE PRINCIPAL PURPOSE OF LOANING THE PROCEEDS TO SHERIDAN HOUSE, INC. TO REFINANCE CERTAIN INDEBTEDNESS INCURRED BY IT IN CONNECTION WITH THE CONSTRUCTION AND EQUIPPING OF CERTAIN SOCIAL SERVICE FACILITIES; PROVIDING FOR THE PRELIMINARY APPROVAL BY THE TOWN FOR THE ISSUANCE OF NOT EXCEEDING \$7,500,000 OF SUCH BONDS IN ONE OR MORE SERIES; PROVIDING FOR CERTAIN RELATED MATTERS IN CONNECTION THEREWITH AND FOR AN EFFECTIVE DATE.

WHEREAS, Sheridan House, Inc., a Florida non profit corporation that has received a Section 501(c)(3) determination letter from the Internal Revenue Service (the "Borrower"), has heretofore applied to the Town of Davie, Florida (the "Town"), to issue certain tax-exempt revenue bonds in one or more series and in an initial aggregate principal amount not to exceed \$7,500,000 (the "Series 2008 Bonds") for the principal purposes of (1) refinancing certain indebtedness incurred by the Borrower in connection with the construction and equipping of certain social service facilities located on an approximately 57-acre site at 1700 South Flamingo Road in Davie, Florida (the "Project"), and (2) paying costs associated with issuance of the Series 2008 Bonds; and

WHEREAS, the Borrower has requested that the Town loan the proceeds of the Series 2008 Bonds to said Borrower pursuant to Chapter 159, Parts I and II, Florida Statutes, and Chapter 166, Parts I and II, Florida Statutes, and such other provision or provisions of Florida law as the Town may determine advisable (the "Act") in order to accomplish the foregoing; and

WHEREAS, the bond resolution granting the final authority for the issuance of the Series 2008 Bonds has not yet been adopted by the Town and will not be adopted until documents related to the issuance of the bonds are in substantially final form; and

WHEREAS, the issuance of the Series 2008 Bonds under the Act in one or more issues or series not exceeding an aggregate principal amount of \$7,500,000 and the loaning of the proceeds thereof to finance and refinance the costs of the Project under a loan agreement or other financing agreement which will provide that payments thereunder be at least sufficient to pay the principal of and interest and redemption premium, if any, on such Series 2008 Bonds and such other costs in connection therewith as may be incurred by the Town, will assist the Borrower and promote the public purposes provided in the Act; and

WHEREAS, in order to satisfy certain requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Town held a public hearing on the proposed issuance of the Series 2008 Bonds for the purposes herein stated on the date hereof, which date is more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in the Town (a true and accurate copy of the affidavit of publication of such notice is attached hereto as EXHIBIT A), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Series 2008 Bonds and the location and nature of the Project and was held in a location which, under the facts and circumstances, was convenient for the residents of the Town, such notice was reasonably designed to inform residents of the Town of the proposed issue, stated that the Town would be the issuer of the Series 2008 Bonds, stated the time and place of the hearing and generally contained the information required by Section 147(f) of the Code and applicable regulations thereunder; and such 14 days were adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notice of public hearings conducted by the Town and provided sufficient time for interested persons to prepare for and to express their views at such hearing; and

WHEREAS, the Borrower has agreed to execute and deliver to the Town the Memorandum of Agreement (the "Memorandum of Agreement") relating to the issuance of the Series 2008 Bonds, attached hereto as EXHIBIT B; and

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called "Resolution" is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. PRELIMINARY STATEMENT. This Resolution is entered into to permit the Borrower to proceed with commitments for refinancing the Project, to provide a limited expression of intention by the Town, prior to the issuance of the Series 2008 Bonds, to issue and sell the Series 2008 Bonds and make the proceeds thereof available to refinance all or part of the costs of the Project, all in accordance with and subject to the provisions of the Constitution and other laws of the State of Florida, including the Code and this Resolution, but subject in all respects to the terms of the Memorandum of Agreement.

SECTION 3. APPROVAL OF REFINANCING THE PROJECT. The refinancing of the Project as described in the notice of public hearing attached hereto as EXHIBIT A by the Town through the issuance of the Series 2008 Bonds, pursuant to the Act, will promote the economic development and health and welfare of the citizens of the Town, will provide the residents of the Town with new jobs or will retain existing jobs, will promote the general economic structure of the Town, will thereby serve the public purposes of the Act and is hereby preliminarily approved, subject, however, in all

respects to the Borrower meeting the conditions set forth in the Memorandum of Agreement to the sole satisfaction of the Town.

SECTION 4. EXECUTION AND DELIVERY OF MEMORANDUM OF AGREEMENT. The Mayor and the Town Clerk of the Town are hereby authorized and directed to execute, for and on behalf of the Town, the Memorandum of Agreement attached hereto as EXHIBIT B between the Town and the Borrower providing understandings relative to the proposed issuance of the Series 2008 Bonds by the Town to refinance the costs of the Project in an initial aggregate principal amount not to exceed lesser of (a) \$7,500,000, or (b) the amount determined by the Town and the Borrower to be necessary to accomplish the foregoing.

SECTION 5. AUTHORIZATION OF THE SERIES 2008 BONDS. There is hereby authorized to be issued and the Town hereby determines to issue the Series 2008 Bonds, if so requested by the Borrower and subject to the conditions set forth in the Memorandum of Agreement attached hereto, in one or more issues or series of such tax-exempt and taxable revenue bonds in an aggregate principal amount not to exceed \$7,500,000 for the principal purpose of refinancing the costs of the Project, and paying the costs associated with the issuance of the Series 2008 Bonds. The rate of interest payable on the Series 2008 Bonds shall not exceed the maximum rate permitted by law.

SECTION 6. APPOINTMENT OF BOND COUNSEL. The firm of Nabors, Giblin & Nickerson, P.A., Tampa, Florida, is hereby approved by the Town to act as bond counsel to the Borrower in connection with the issuance by the Town of the Series 2008 Bonds.

SECTION 7. GENERAL AUTHORIZATION. The Mayor, Town Finance Director, Town Clerk and Town Attorney are hereby further authorized to proceed with the undertakings on the part of the Town and are further authorized to take such steps and actions as may be required or necessary in order to cause the Town to issue the Series 2008 Bonds subject in all respects to the terms and conditions set forth herein and in the Memorandum of Agreement.

SECTION 8. AFFIRMATIVE ACTION. This resolution is an affirmative action of the Town toward the issuance of the Series 2008 Bonds, as contemplated in the Memorandum of Agreement, in accordance with the purposes of the laws of the State of Florida and the applicable United States Treasury Regulations.

SECTION 9. LIMITED OBLIGATIONS. The Series 2008 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the Town, Broward County, the State of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to a loan agreement or other financing agreement entered into by and between the Town and the Borrower prior to or contemporaneously with the issuance of the Series 2008 Bonds.

SECTION 10. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits relating to the Project and the Town shall not be construed by reason of its adoption of this resolution to (a) attest to the Borrower's ability to repay the indebtedness represented by the Series 2008 Bonds, (b) institute a recommendation to prospective purchasers of the Series 2008 Bonds to purchase the same, or (c) have waived any right of the Town or prevent the Town from asserting any rights or responsibilities it may have in that regard.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2008.

Mayor/Councilmember

ATTEST:

Town Clerk

APPROVED THIS _____ DAY OF _____, 2008.

EXHIBIT A
NOTICE OF PUBLIC HEARING

The Town Council of the Town of Davie, Florida (the "Town") will hold a public hearing on August 20, 2008, at 7:00 P.M., or as soon thereafter as the matter can be heard, at the Town Council Chambers, located at 6591 Orange Drive, Davie, Florida 33314 to consider adoption of a resolution providing for the preliminary approval of the issuance by the Town of not exceeding \$7,500,000 of its Town of Davie, Florida Variable Rate Demand Revenue Bonds (Sheridan House, Inc. Project), Series 2008 (the "Series 2008 Bonds") to be issued in one or more series. The proceeds of the Series 2008 Bonds will be loaned to Sheridan House, Inc., a Florida non profit corporation that has received a Section 501(c)(3) determination letter from the Internal Revenue Service (the "Borrower") for the principal purposes of (1) refinancing certain indebtedness incurred by the Borrower in connection with the construction and equipping of certain social service facilities located on an approximately 57-acre site at 1700 South Flamingo Road in Davie, Florida (the "Project"), and (2) paying costs associated with issuance of the Series 2008 Bonds. The Project is owned and operated by the Borrower and its affiliates.

The Series 2008 Bonds shall be payable solely from the revenues derived by the Town from a loan agreement, mortgage and security agreement and other financing documents to be entered into by and between the Town and the Borrower prior to or contemporaneously with the issuance of the Series 2008 Bonds. Such Series 2008 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the Town, Broward County, the State of Florida or any political subdivision or agency thereof. Issuance of the Series 2008 Bonds shall be subject to several conditions including satisfactory documentation, the approval by bond counsel as to the tax-exempt status of the interest on all or a portion of the Series 2008 Bonds and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who may be interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted to the Town of Davie, Florida prior to the hearing at 6591 Orange Drive, Davie, Florida 33314, Attention: Russell C. Muniz, CMC, Town Clerk.

ALL PERSONS FOR OR AGAINST SAID APPROVAL CAN BE HEARD AT SAID TIME AND PLACE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE TOWN WITH RESPECT TO SUCH HEARING OR MEETING, (S)HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF SUCH HEARING OR MEETING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.

Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk at 954-797-1023 at least five business days prior to the meeting to request such accommodations. If you are hearing or speech impaired, please contact the Florida Relay Service by using the following numbers: 1-800-955-8700 (voice) or 1-800-955-8771 (TDD).

By order of the Town of Davie, Florida.
TOWN OF DAVIE, FLORIDA

/s/ *Russell C. Muniz*

Town Clerk

EXHIBIT B

MEMORANDUM OF AGREEMENT FOR ISSUANCE OF PRIVATE ACTIVITY REVENUE BONDS

This Memorandum of Agreement (the "Agreement") is between the Town of Davie, Florida, a municipal corporation (the "Town") and Sheridan House, Inc., a Florida non profit corporation that has received a Section 501(c)(3) determination letter from the Internal Revenue Service (the "Borrower").

WITNESSETH:

1. Preliminary Statement. Among the matters of mutual understanding and inducement which have resulted in the execution of this Agreement are the following:

(a) Whereas Chapter 159, Parts I and II, Florida Statutes, and Chapter 166, Parts I and II, Florida Statutes, (the "Act") provides that the Town may issue tax-exempt revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, or use such proceeds, to defray the cost of acquiring, by purchase or by construction, certain qualifying social service center facilities.

(b) The Borrower is considering refinancing certain indebtedness incurred by the Borrower in connection with the construction and equipping of certain social service facilities located on an approximately 57-acre site at 1700 South Flamingo Road in Davie, Florida (the "Project"), and (2) paying costs associated with issuance of the Series 2008 Bonds. The Project is owned and operated by the Borrower and its affiliates.

(c) The Town intends this Agreement to constitute its official binding commitment, subject to the terms hereof, to issue its bonds (the "Series 2008 Bonds") in one or more series or issues pursuant to a plan of finance and the Act in the amount to be agreed upon by the Town and the Borrower and to loan the proceeds thereof to the Borrower, or to use such proceeds, refinance costs of the Project, including all costs incurred in connection with the issuance of the Series 2008 Bonds by the Town and the Borrower, up to an amount not to exceed \$7,500,000 initial aggregate principal amount.

(d) The Town considers the issuance and sale of the Series 2008 Bonds, for the purposes hereinabove set forth, consistent with the objectives of the Act. This commitment is an affirmative official action of the Town toward the issuance of the Series 2008 Bonds as herein contemplated in accordance with the purposes of both the Act and the applicable United States Treasury Regulations.

2. Undertakings on the Part of the Town. Subject to the terms hereof, the Town agrees as follows:

(a) Subject to the Borrower providing the Town with sufficient evidence to enable the Town to make the findings set forth in Section 159.29 of the Act, the Town will authorize the issuance of the Series 2008 Bonds, in one or more series or issues, in the aggregate principal amount necessary and sufficient to refinance all or a portion of the

costs of the Project, as the Town and the Borrower shall agree in writing, but in all events, the principal amount of such Series 2008 Bonds shall not exceed the lesser of (i) the amount determined by the Town and the Borrower necessary to accomplish the foregoing, or (ii) \$7,500,000.

(b) The Town will cooperate with the Borrower and with the underwriters, placement agents or purchasers of the Series 2008 Bonds and the bond counsel of the Town with respect to the issuance and sale of the Series 2008 Bonds and will take such further action and authorize the execution of such documents as shall be mutually satisfactory to the Town and the Borrower for the authorization, issuance and sale of such Series 2008 Bonds and the use of the proceeds thereof to refinance the costs of the Project.

(c) The Town may take further action to permit, in its sole discretion, the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether pari passu with other series of bonds or otherwise, for the purpose of defraying the cost of completion, enlargements, improvements and expansions of the Project, or any segment thereof, or refunding of the Series 2008 Bonds.

(d) The loan agreement, trust indenture, mortgage and other financing documents (collectively, the "Financing Agreements") between the Town and the Borrower shall, under terms agreed upon by the parties, provide for payments to be made by the Borrower in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Series 2008 Bonds, as and when the same shall become due and payable.

(e) The Series 2008 Bonds shall specifically provide that they are payable solely from the revenues derived pursuant to the Financing Agreements between the Town and the Borrower or other agreements approved by the Town, except to the extent payable out of amounts attributable to Bond proceeds. The Series 2008 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit of the Town, Broward County, the State of Florida or any political subdivision or agency thereof, and such fact shall be plainly stated on the face of the Series 2008 Bonds.

(f) Issuance of the Series 2008 Bonds by the Town shall be contingent upon compliance with all provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, including the ability of and desirability by the Town to issue obligations to fund the costs of the Project.

3. Undertakings on the Part of the Borrower. Subject to the terms hereof, the Borrower agrees as follows:

(a) The Borrower will use reasonable efforts to insure that the Series 2008 Bonds in the aggregate principal amount as stated above are sold; provided, however, that the terms of such Series 2008 Bonds and the sale and delivery thereof shall be mutually satisfactory to the Town and the Borrower.

(b) Prior to the issuance of the Series 2008 Bonds in the principal amount stated above, in one or more series or issues from time to time as the Town and the Borrower shall agree in writing, the Borrower will enter into the Financing Agreements with the Town, the terms of which shall be mutually agreeable to the Town and Borrower, providing for the loan or use of the proceeds of the Series 2008 Bonds to refinance the costs of the Project. Such Financing Agreements will provide that the Borrower will be obligated to pay the Town (or the trustee for holders of the Series 2008 Bonds on behalf of the Town, as the case may be) sums sufficient in the aggregate to enable the Town to pay the principal of and interest and redemption premium, if any, on the Series 2008 Bonds, as and when the same shall become due and payable, and all other expenses related to the issuance and delivery of the Series 2008 Bonds.

(c) The Borrower shall, in addition to paying the amounts set forth in the Financing Agreements, pay all costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the Project.

(d) To the extent not otherwise paid from Bond proceeds as part of the costs of the Project, the Borrower hereby agrees to pay all of the out of pocket expenses of officials and representatives of the Town incurred in connection with the issuance of the Series 2008 Bonds and will pay reasonable fees and reasonable expenses of the Town, including those of: (1) the Town Attorney in the amount of \$1,850, plus reasonable expenses; (2) the Town's conduit financing fee in the amount of \$17,500; and (3) Adorno & Yoss LLP, Special Counsel to the Town, in the amount of \$10,000, plus reasonable expenses.

(e) The Borrower will hold the Town free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the Project.

(f) The Borrower agrees to indemnify and defend the Town and hold the Town harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the refinancing of the Project or the issuance of the Series 2008 Bonds and the Borrower's undertaking thereof, or in any way growing out of or resulting from this Agreement including, without limitation, all costs and expenses of the Town and reasonable attorneys' and legal assistants' fees incurred in the enforcement of any agreement of the Borrower contained herein; unless such claims, losses, liabilities or damages are caused by the gross negligence, willful misconduct or violation of law by the Town or by the Town's employees or agents. In the event that the Series 2008 Bonds are not issued and delivered, this indemnity shall survive the termination of this Agreement.

(g) The Borrower will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

4. General Provisions. All commitments of the Town under Section 2 hereof and of the Borrower under Section 3 hereof are subject to the conditions that all of the

following events shall have occurred not later than August 20, 2009 or such other date as shall be mutually satisfactory to the Town and Borrower.

(a) The Town shall be lawfully entitled to issue the Series 2008 Bonds as herein contemplated.

(b) The Town and Borrower shall have agreed on mutually acceptable terms for the Series 2008 Bonds and the sale and delivery thereof and mutually acceptable terms and conditions of any trust instrument or instruments in respect thereto and any Financing Agreements or other agreements incidental to the financing or referred to in Sections 2 and 3 hereof.

(c) Such other rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Borrower and to the Town as to such matters with respect to the Series 2008 Bonds, the refinancing of the Project, the Financing Agreements and any other trust instrument or instruments, as shall be specified by the Borrower or the Town, shall have been obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competent jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Series 2008 Bonds.

(d) Compliance with all applicable provisions of Chapters 159, 166, 189, 215 and 218, Florida Statutes, relating to the issuance of the Series 2008 Bonds, the interest rate thereon, the type of purchasers of the Series 2008 Bonds and the terms on which the Series 2008 Bonds may otherwise be issued.

(e) The Series 2008 Bonds shall be sold to institutional investors in principal amounts of not less than \$100,000 (unless otherwise agreed to in writing by the Town).

5. Binding Effect. All covenants and agreements herein contained by or on behalf of the Town and the Borrower shall bind and inure to the benefit of the respective successors and assigns of the Town and the Borrower whether so expressed or not.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their officers thereunder duly authorized as of the 20th day of August, 2008.

TOWN OF DAVIE, FLORIDA

(SEAL)

By: _____
Mayor/Councilmember

ATTEST:

Town Clerk

SHERIDAN HOUSE, INC.

By: _____
President

ATTEST:

Secretary/Treasurer